



Canadian Environmental  
Assessment Agency

Agence canadienne  
d'évaluation environnementale



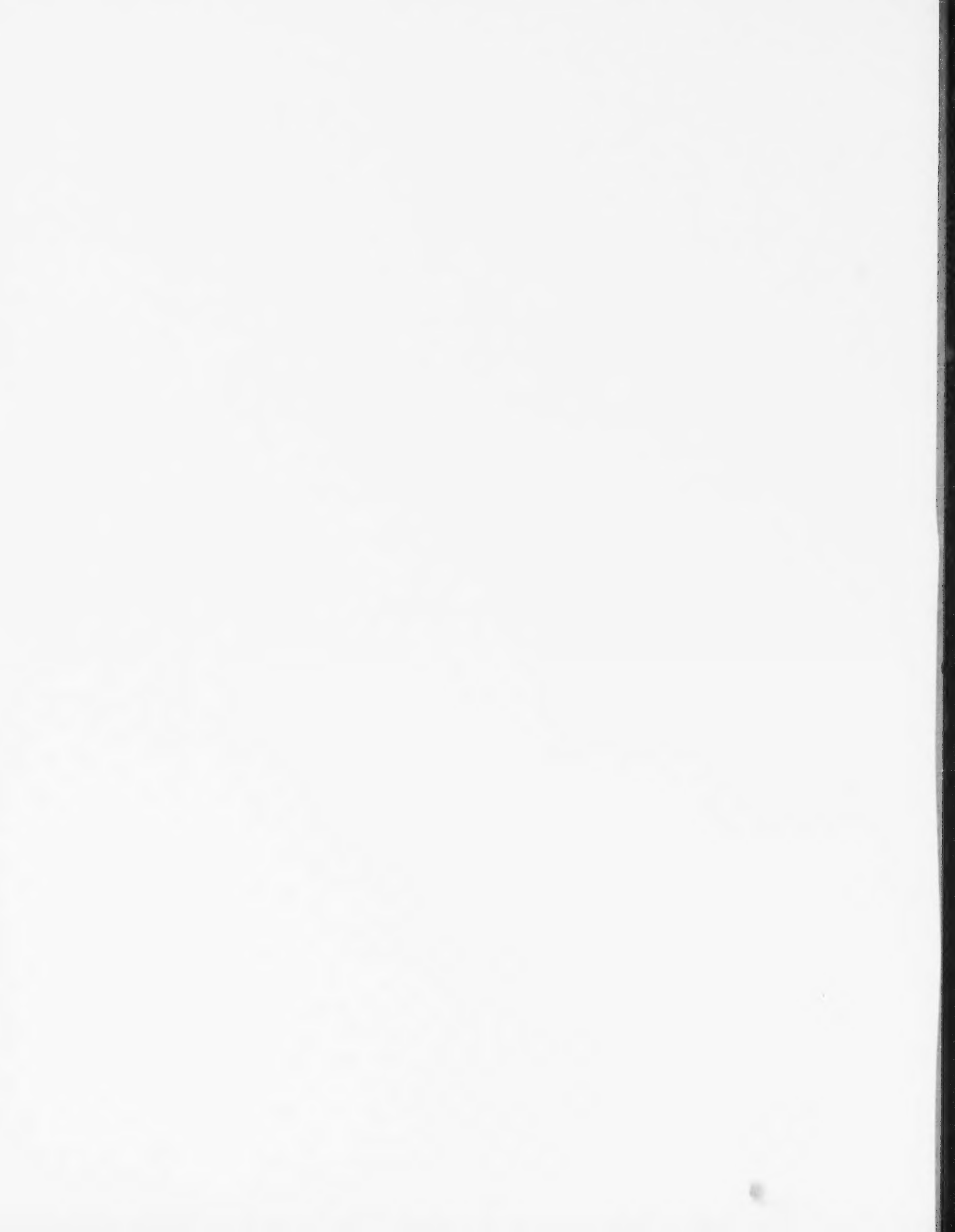
## Public Participation in Screenings

*An Analysis of Efforts made to Obtain Information and Views of the Public  
during the Conduct of Screenings*

Government of Canada  
Quality Assurance Program for  
Environmental Assessments under the  
*Canadian Environmental Assessment Act*  
December, 2009

Canada







## About this Report

This report is issued under the Quality Assurance Program for environmental assessments conducted under the *Canadian Environmental Assessment Act* (the Act). The Canadian Environmental Assessment Agency (the Agency) has a duty, under section 63 of the Act, to establish and lead such a program.

The report explores in detail a finding in a previous report of the Quality Assurance Program to the effect that Public Participation Notices related to screenings conducted under the Act are seldom posted on the Canadian Environmental Assessment Registry Internet site. The Act requires such notices to be posted in those cases where a responsible authority is of the opinion that public participation in the screening is appropriate in the circumstances.

The study was undertaken by the Agency and was based on input received from federal government departments and agencies.

The report is intended to inform the actions of federal authorities who are responsible for undertaking screenings (responsible authorities) and who make all decisions regarding the need for public participation in those assessments.

The report is also intended to make information of potential interest available to the general public and to the Parliamentarians who will conduct the upcoming review of the Act scheduled to commence in 2010.

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## 1 INTRODUCTION

In December of 2007, the Canadian Environmental Assessment Agency (CEA Agency) published on its Web site a report entitled *Federal Screenings: An Analysis based on Information from the Canadian Environmental Assessment Registry Internet Site*. The report was published under the CEA Agency-led quality assurance program for federal environmental assessments, established pursuant to the amended *Canadian Environmental Assessment Act* (the Act), which came into force on October 30, 2003.

One of the report's important findings was that over 90% of the screenings addressed in the study dealt with projects likely to have had low potential to cause adverse environmental effects or to pose environmental risks. Therefore, there was an expectation that public participation in screenings would occur infrequently. Even with that expectation, however, the actual frequency of posting, on the Canadian Environmental Assessment Registry Internet Site (CEARIS), of *Public Participation Notices* as per subsection 18(3) and paragraph 55.1(2)(h) of the Act, was surprisingly low. Such notices had been posted for only 60 out of the 18 056 screenings for which *Notices of Commencement* had been posted during the three-year study period (2004 to 2006). Moreover, in only 14 of those instances had the notice been posted by a department or agency other than Parks Canada Agency.

Members of the Senior Management Committee on Environmental Assessment (SMCEA), the interdepartmental body that serves as the principal discussion forum for matters related to federal environmental assessment, made two important points in relation to the above findings. Firstly, they emphasized that, because of the nature of the projects assessed, public participation in screenings is very rarely warranted. Secondly, they suggested that the data presented in the report did not give the complete picture of the efforts that had actually been made to obtain and consider information and views of the public during the conduct of the screenings. As a result, the CEA Agency developed and led an interdepartmental study to shed more light on the latter point. This report is the result of implementing that study.

## 2 METHODS

A two-part work program, described in detail in Appendix 1, was developed.

Part A of the program comprised the assembly and analysis of the following information:

- existing policies and procedures applied in relation to obtaining and considering information and views of the public during the conduct of screenings, or interpreting and implementing subsection 18(3) of the Act;
- the nature of any problems encountered in interpreting and implementing subsection 18(3) of the Act; and
- any recommended solutions to identified problems.



Part B of the program involved the assembly and analysis of information pertaining to efforts made to obtain and consider information and views of the public in respect to a random sample of screenings that met the following criteria:

- *Notice of Commencement* posted on the CEARIS during the second half of 2006;
- *Notice of Decision* posted on the CEARIS by May 31, 2007; and
- *Public Participation Notice* not posted.

The time period of *Notices of Commencement* for screenings addressed in the present study (last half of 2006) is a subset of that of the original study of screenings (calendar years 2004 to 2006).

Departments and agencies that were responsible authorities for screenings in the random sample were asked to identify those screenings where efforts had been made to obtain and consider information and views of the public. For that smaller subset of screenings, they were requested to provide the following specific information:

- mechanism for obtaining and considering information and views of the public;
- rationale for using the indicated mechanism; and
- rationale for not posting a *Public Participation Notice*.

The template used for submitting the above information is provided in Appendix 1, Part B. Information about departmental inputs to the study is provided in Appendix 2.

The CEA Agency undertook the task of compiling, analyzing and reporting upon the information provided by responsible authorities. In doing so, it made best efforts to interpret the information provided, recognizing that it was not at a consistent level of detail and that categories for classifying the mechanisms used for obtaining and considering information and views of the public had not been established in advance of the request for information made to departments and agencies. Moreover, no attempt was made to independently verify specific items of information or to expand upon them when information was lacking. Although those factors may have influenced to some extent the level of precision of the study, they are unlikely to have substantially affected the identification of key issues or the conclusions reached.

### **3 RESULTS**

The study's key findings are summarized below, and a more detailed examination of the results is provided in Appendix 3.

#### **3.1 PART A OF THE WORK PROGRAM**

##### **3.1.1 Policies, Procedures and Practices of Responsible Authorities**

The information submitted by departments and agencies revealed the following:



- A number of federal departments and agencies have developed policies on public participation in screenings, which vary considerably in coverage, consistency and level of detail. Not everyone has updated their documentation to reflect the amendments to the Act proclaimed on October 30, 2003.
- There is considerable variability, both within and among federal departments and agencies, in the interpretation of the term "public participation", which is not defined in the Act.
- There is considerable variability, both within and among federal departments and agencies, in written and unwritten policies on public participation in screenings.
- Only Parks Canada Agency submitted guidance material that specifically addressed the interpretation of subsection 18(3) of the Act. That guidance refers directly to the criteria in the *Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act*, issued in July 2006.

### **3.1.2 Reported Problems in Interpreting and Implementing Subsection 18(3) of the Act, and Suggested Solutions**

The participants in the study were asked to identify problems encountered in interpreting and implementing subsection 18(3) of the Act, and to suggest possible solutions to those problems. A summary of their observations and suggestions is provided in Appendix 3.

A variety of issues were raised. Some related to concerns about delays and process duplication in situations where other planning and assessment processes also applied. Some related to the additional steps, time and cost involved in inviting public participation in a screening.

Other issues raised pertained to the wide range of available approaches to public participation, as opposed to the actual need for public participation, or to questions like narrow scoping that were not directly related to implementing the provisions of subsection 18(3).

Interestingly, one department offered the comment that leaving the decision on the need for public participation solely to the discretion of responsible authorities leads to inconsistent decision-making. Related comments pointed to a lack of criteria for interpreting "appropriate in the circumstances", and thus invoking subsection 18(3).

Some of the solutions suggested by federal authorities related to the considerations discussed immediately above; they included providing more guidance and definition around public participation and interpretation of subsection 18(3). Others involved improving policy or legislative clarity in relation to the use of the results of public consultation associated with other processes. Still others involved the avoidance of perceived problems by removing subsection 18(3), in whole or in part, from the Act.

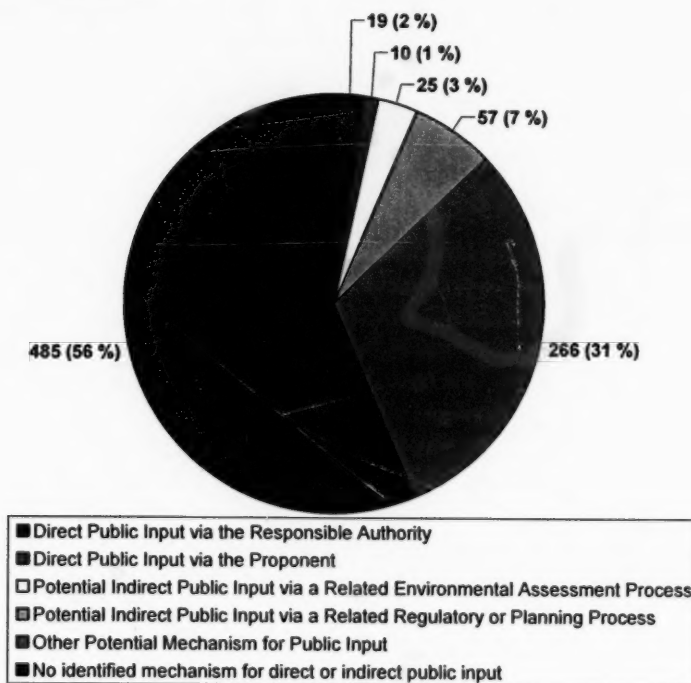


### 3.2 PART B OF THE WORK PROGRAM

The initial random sample comprised 999 randomly selected screenings of which 101 were eliminated from the analysis because the responsible authorities involved did not participate in the study. An additional 36 screenings were eliminated from the analysis because, upon closer examination, it was determined they did not meet all of the criteria for inclusion in the random sample. Therefore, the final sample size was 862.

Figure 1 shows the results of the analysis of mechanisms of public input, based on the information submitted for the final sample of screenings, and grouped as follows:

- Direct public input to a federal screening managed by the responsible authority
- Direct public input to a federal screening managed by the proponent
- Potential indirect public input via a related environmental assessment process
- Potential indirect public input via a related regulatory or planning process
- Potential indirect public input via another mechanism
- No identified mechanism



**Figure 1. Reported Mechanisms for obtaining and considering Information and Views of the Public**

A more detailed breakdown of the above results is provided in Table 1. Further discussion of projects in each individual category of the table is provided in Appendix 3.



<b>Table 1. Breakdown of Reported Mechanisms for obtaining and considering Information and Views of the Public</b>		
<b>Mechanism for Public Input</b>	<b>Reported Number of Screenings</b>	<b>% of Sample</b>
<b>-1- Direct Input to a Federal Screening</b>		
a) managed by the responsible authority	19	2.2
b) managed by the proponent	10	1.2
<b>Subtotal</b>	<b>29</b>	<b>3.4</b>
<b>-2- Potential Indirect Input via a Related Environmental Assessment Process</b>		
a) previous federal assessment	4	0.5
b) provincial project registration process to establish need for and requirements of assessment	4	0.5
c) full provincial assessment	6	0.7
d) assessment under the <i>Nunavut Land Claims Agreement</i>	10	1.2
e) assessment under the <i>James Bay and Northern Quebec Agreement</i>	1	0.1
<b>Subtotal</b>	<b>25</b>	<b>2.9</b>
<b>-3- Potential Indirect Input via a Related Regulatory, Planning or Approval Mechanism</b>		
a) federal or provincial regulatory processes		
<i>National Energy Board Act</i>	6	0.7
<i>Canadian Oil and Gas Operations Act</i>	1	0.1
<i>Navigable Waters Protection Act</i>	14	1.6
<i>Canadian Environmental Protection Act</i>	1	0.1
<i>Ontario Drainage Act</i>	7	0.8
b) processes/procedures of local authorities	17	2.0
c) planning processes of National Parks or National Historic Sites	8	0.9
d) other federal planning processes	3	0.3
<b>Subtotal</b>	<b>57</b>	<b>6.6</b>
<b>-4- Potential Indirect Input via another Mechanism</b>		
a) processes/procedures of First Nations	243	28.2
b) processes/procedures of Small Craft Harbour Authorities	21	2.4
c) processes/procedures of provincial government departments	2	0.2
<b>Subtotal</b>	<b>266</b>	<b>30.9</b>
<b>-5- No Identified Mechanism</b>		
<b>Subtotal</b>	<b>485</b>	<b>56.3</b>
<b>TOTAL</b>	<b>862</b>	<b>100</b>



Responsible authorities indicated that they had directly sought input from selected members of the public in 19 out of the 862 cases examined (2.2%). In those cases, that input was sought from individuals who might have been affected by the project or who might have had an interest in it. Because responsible authorities did not perceive the environmental issues to be of interest to the public at large, they did not consider such targeted solicitations of input to constitute public participation under subsection 18(3) of the Act. Stated rationales for not posting a *Public Participation Notice* were as follows:

- No need or demand (6 cases)
- Low impact project (7 cases)
- Cost and delays associated with document translation, in light of existing procedures for informing local stakeholders and media of upcoming projects and inviting comment (6 cases).

Responsible authorities indicated that in 10 out of the 862 cases examined (1.2%), the proponent had directly sought input (usually of an unspecified nature) from the public. Stated rationales for not posting a *Public Participation Notice* were as follows:

- No need or demand (9 cases)
- Low impact project (1 case)

Responsible authorities indicated that in 25 other cases (2.9% of the sample of screenings) public input was available indirectly via a related environmental assessment process.

In 323 other cases (37.5% of the sample of screenings) responsible authorities indicated that various processes other than environmental assessment had been available as potential sources of public input. Those mechanisms are listed in Table 1, and described in Appendix 3. In most cases it was not clear that the mechanism in question had actually informed the screening. Moreover, in many cases, the nature of public input that might be expected from such potential mechanisms would be narrower in scope than those normally associated with an environmental assessment.

In 485 cases (56.3% of the sample of screenings) there was no indication of any mechanism for obtaining public input, either directly or indirectly.

## 4 DISCUSSION

The study focussed on examining whether there was a higher frequency of efforts to obtain public input to screenings than was indicated in the December, 2007 quality assurance report on screenings, which covered the calendar years 2004 to 2006.

The results of the study support the claim made by a number of responsible authorities that such efforts occur at a greater frequency than is indicated by postings of *Notices of Public Participation* on the CEARIS. During the last half of the year 2006, 2190 *Notices of Commencement* were posted on the CEARIS, while only eight *Public Participation*



*Notices* were posted during that period (frequency of 0.4%). The results of the study indicate that, during the same period, the frequency of responsible authorities' direct solicitation of public input to screenings, in cases where no *Public Participation Notice* was posted, was about 2.2% or roughly five times the above frequency.

Public participation activities conducted by a non-government proponent conducting a screening on behalf of a responsible authority occurred in 1.2% of the screenings addressed in the present study. This was three times the frequency of solicitations of public input indicated by *Public Participation Notices*. Such notices are rarely, if ever, posted to announce the proponent's public consultation activities.

The results of the study also highlighted the potentially important role of environmental assessment processes of other jurisdictions as indirect sources of information and views of the public. However, they shed little light on the specific nature of information and views obtained through those sources or how that had affected the conduct of the screening. Because some uncertainty was attached to the above questions, this indirect mechanism of obtaining and considering information and views of the public was classified as a potential mechanism.

Even less certain was the extent to which public input available via regulatory or other mechanisms had affected the screenings that had been conducted. A variety of mechanisms were cited as being available in about a third of all of the screenings addressed in the study. Without further information, it remains uncertain and perhaps even doubtful whether these mechanisms consistently provided reasonable opportunities for input into an environmental assessment.

In summary, in 3.4% of cases the responsible authority or proponent made direct efforts, not indicated by *Public Participation Notices*, to solicit public input. This is substantially greater than the 0.4% frequency indicated by actual *Public Participation Notices* posted on the CEARIS. Although this finding substantiates the claim of responsible authorities that public participation activities occur more frequently than indicated by *Public Participation Notices*, it also begs the question of why *Public Participation Notices* are not being published in almost nine out of ten cases.

It is worth noting that only two obligations exist under subsection 18(3) of the Act, in situations where the responsible authority is of the opinion that public participation in the screening of a project is appropriate in the circumstances. First, the responsible authority must post on the CEARIS a description of the scope of the project, the factors to be taken into consideration in the screening and the scope of those factors, or an indication of how such a description may be obtained. Second, it must provide the public, giving adequate advance notice, with an opportunity to examine and comment on the screening report and on any record relating to the project that has been included in the Registry, and must post a notice on the CEARIS to that effect.

Any other public participation initiatives are entirely at the discretion of responsible authorities.



The information submitted by responsible authorities indicates that there is a widely held view that the legislatively defined requirements of subsection 18(3) can be onerous relative to the potential benefits to be gained, particularly in the case of small, non-controversial projects. Some have made distinctions between public participation under subsection 18(3) and more targeted and selective direct means of obtaining and considering information and views of the public.

There are clearly gradations in the nature and extent of likely public interest in any given assessment, and thus the nature and extent of any required efforts to engage the public. However, it is arguable whether one could conclude that some form of public input was desirable, and yet not determine that "public participation is appropriate in the circumstances", that is, not trigger subsection 18(3) of the Act.

A variety of issues surrounding the use of subsection 18(3) were identified by responsible authorities. A number of comments related to confusion, duplication and timing considerations associated with concurrent or sequential federal and provincial consultation activities; the amount of time involved; and uncertainty about the need for and best approaches to public participation.

The concerns raised by responsible authorities about timeliness and interaction with other public input processes would affect how public participation is conducted, but would not create fundamental barriers to invoking subsection 18(3). This is especially so in light of two factors. First, there is a generally held view, supported by information in the previous and current quality assurance study, that a relatively low percentage of screenings warrant public participation. Second, mandatory requirements of the Act with respect to public participation in screenings are limited to the posting of certain information on the CEARIS and providing the public with an opportunity to comment on the screening report. It would not have been unduly onerous to apply those requirements to the limited number of screening involved.

The suggestions of study participants included recommendations for detailed guidance on public participation. Such guidance (*Public Participation Guide*, May, 2008) was in fact issued shortly after the conclusion of the information gathering stage of the study. In the year following its publication (June 1, 2008 to June 1, 2009), the observed frequency of posting *Public Participation Notices* was 0.2%, half of the 0.4% rate observed during the period covered by the present study (last half of 2006), and less than two thirds of 0.33% rate observed during the three-year period (2004-06) covered by the previous study. This raises doubts about whether the issuance of guidance is actually having the effect of encouraging public participation in screenings. Although the Agency notified departments and agencies of the existence of the new guidance, it has received at least limited feedback to the effect that awareness of the guidance is not universal among federal environmental assessment practitioners.

Some of the problems identified and solutions offered by departments and agencies suggest that uncertainty and lack of clarity are leading to avoidance of the use of subsection 18(3). The Act is based on the principle of self assessment, under which responsible authorities are responsible for ensuring an environmental assessment is



conducted. However, there appears to be a tension between the general desire of responsible authorities to exercise their discretion under the Act, and their call for greater precision and clarity through the issuance of detailed guidance. Either implicitly or explicitly, the Act gives responsible authorities the discretion to make a variety of decisions in the conduct of the environmental assessment. In the case of public participation in screenings, however, there is a recognition that such discretion may need to be circumscribed, as the Act allows the Governor in Council to make regulations identifying circumstances when public participation is required.

## 5 CONCLUSIONS

First, this study indicates that the solicitation or receipt of public input to screenings occurs at a substantially greater frequency than is indicated in the December, 2007 report. It does, however, raise concerns about why *Public Participation Notices* were so seldom posted on the CEARIS and why the other requirements of subsection 18(3) of the Act were not met.

It is clear that there is considerable divergence of opinion and practice in relation to the interpretation of subsection 18(3). Regardless of the actual validity of distinctions being made between public participation under subsection 18(3) and more targeted and selective direct means of obtaining and considering information and views of the public, process transparency has suffered. Information on public participation posted on the CEARIS, the main window to federal environmental assessment activity, does not appear to reflect what is actually happening.

Second, there are a variety of mechanisms that are available for soliciting public input, including those that may be used in other environmental assessment processes or in related regulatory processes, or those that may be implemented by the proponent. The purposes of those mechanisms may not always be the same as those that pertain to federal environmental assessments, and they may be implemented before, during or after the federal environmental assessment. The Act is silent on whether and how such mechanisms could be used to fulfil public participation requirements related to environmental assessment or to provide information supporting decisions on whether public participation is "appropriate in the circumstances. However, the Public Participation Guide does address those questions.

In future reviews of the Act, it may be appropriate to examine more closely the purpose of and mechanisms for public participation in screenings, including the role of public input from other related processes.

## 6 RECOMMENDATIONS

Responsible authorities should promote awareness and use of the *Public Participation Guide* among staff engaged in conducting screenings, and should advise the Agency that they have done so.



Where a responsible authority determines that public participation as per subsection 18(3) of the Act is not appropriate in the circumstances, but makes use of relevant information from a previously conducted public consultation process, it should post a notice to that effect on the Canadian Environmental Assessment Registry Internet Site as per paragraph 55.1(2)(u). The notice should identify the specific process that provided the information used.

With respect to the above recommendation, the Agency should examine whether it can specify that such information is to be included, pursuant to paragraph 55.1(3)(d) of the Act, and if not, whether there is need for a regulation under paragraph 59(h.1) to prescribe the inclusion of such information.

The need for and modalities of a regulation under paragraph 59(l.03), to require public participation for some screenings, should be examined by the Agency in consultation with responsible authorities.

The provisions of section 18(3) should be carefully examined in the context of future review and amendment of the Act to ensure that such provisions do not have the contrary effect of discouraging public participation.



**Appendix 1**  
**FINAL WORKPLAN**  
*Efforts made to obtain and consider  
Information and Views of the Public  
during the Conduct of Screenings*

**BACKGROUND**

At the June 21 meeting of the SMCEA there was a discussion of the findings of the draft quality assurance report entitled "Federal Screenings - *An Analysis Based on Information from the Internet Site of the Canadian Environmental Assessment Registry*".

Of particular interest to SMCEA members were statistics indicating that the posting of *Public Participation Notices* on the Canadian Environmental Assessment Registry Internet Site (CEARIS) rarely occurs.

Most SMCEA members were of the opinion that the situation on the ground was not fully captured by the statistics presented in the report. There was general agreement that more work should be done to gain a more concrete understanding and appreciation of the actual situation. The SMCEA tasked the SMCEA Subcommittee on Quality Assurance to develop and recommend an easily executed workplan to be undertaken cooperatively by member departments and agencies of the SMCEA. The attached Final Workplan is the result of those efforts, as well as subsequent discussions at the SMCEA meeting of 26 September 2007.

**WORKPLAN**

The proposed workplan comprises two distinct components (Parts A and B).

***Part A***

In relation to Part A, all member organizations of the SMCEA, whether or not they contribute to Part B of the program, would provide general information on their existing policies and procedures that pertain to obtaining and considering information and views of the public, and to interpreting and implementing subsection 18(3) of the Act. At their discretion, they could provide more detailed explanations of how they go about dealing with the question of public participation in screenings.

On a voluntary basis, member organizations would also identify the nature of any problems they have encountered in interpreting and implementing subsection 18(3), and would offer suggestions for legislative or non-legislative solutions of those problems.

Individual member organizations could also voluntarily contribute specific studies of their own design to illustrate specific aspects they feel warrant greater emphasis, either from their individual perspective or from a broader governmental perspective. The Agency would subsequently ensure that any such contributions were made available and also addressed in the overall synthesis of results.

***Part B***

In relation to Part B, member organizations of the SMCEA would identify, from a random, government-wide sample of 999 screenings that did not involve the posting of a *Public Participation Notice*, those screenings that nevertheless involved efforts to obtain and consider information and views of the public. For the latter relatively small subset of the total sample, the



primary responsible authority (the federal authority that posted the *Notice of Commencement*) would provide the following information in tabular form, as illustrated in the appended Part B template:

1. The CEARIS number of the screening
2. The project title
3. Mechanisms used to obtain and consider information and views of the public. These could include, for example:
  - Research or public participation activities pursued by the proponent
  - Research or public participation activities pursued by a provincial environmental assessment authority
  - Research or public consultation activities pursued by other individuals or organizations (e.g., academic researchers, consultants, planning bodies).
  - Discussions between responsible authorities and key informants (e.g., councillors, prominent citizens, opinion leaders).
  - Input solicited by responsible authorities from specific Individuals or groups believed likely to have an interest in the project.
  - Unsolicited input from specific Individuals or groups with a self-identified interest in the project.
  - Discussions between the responsible authorities and an informally established public advisory committee.
  - Discussions between the responsible authorities and a formally established public advisory committee.
  - Broadly based public participation initiatives of responsible authorities that did not result in the posting of a *Public Participation Notice*.
4. The rationale for the chosen mechanism.
5. The reason for not posting a *Public Participation Notice* on the CEARIS.

The initial random sample of 999 screenings would be drawn from screenings for which a *Notice of Commencement* was posted on the Registry Internet Site between July 1 and Dec 31, 2006 and a *Notice of Decision* was posted prior to May 31, 2007 (the date the new *Exclusion List Regulations* came into force). The Agency would provide lists of screenings to be addressed by each SMCEA member organization, as well as the names of departmental contacts listed on the CEARIS for the screenings. The number of screenings each department or agency would address would be roughly proportional to its level of screening activity during the indicated sampling period.

#### TIMETABLE

Each SMCEA member organization would complete its portion of the work by the end of February, 2008.

The Agency would compile and analyze the submitted contributions as they are received.

The status of the study elements, and any preliminary findings would be discussed at the SMCEA meeting planned for 14 February 2008.



**Part A**  
**Provision of General Information**  
*Policies, Procedures, Problems and Solutions  
that pertain to obtaining and considering  
Information and Views of the Public  
during the Conduct of Screenings*

1. Any existing policies or procedures that your department or agency applies in relation to obtaining and considering information and views of the public during the conduct of screenings, or interpreting and implementing section 18(3) of the Act.
2. The nature of any problems that your department or agency has encountered in interpreting and implementing section 18(3) of the Act.
3. Any recommended non-legislative solutions to problems identified by your department or agency.
4. Any recommended legislative solutions to problems identified by your department or agency.
5. Any studies designed and executed by individual member organizations to illustrate aspects felt to be important, either from the standpoint of the contributing organization or from a broader governmental perspective.

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Note 1: Provision of information in relation to items 2, 3 4 and 5 is at the discretion of each department or agency represented on SMCEA. Requests for information of this type were included because members of the Subcommittee on Quality Assurance as well as members of SMCEA have clearly indicated that there are a range complex considerations associated with interpreting and implementing subsection 18(3) of the Act. Although compilation and analysis of the data provided by departments and agencies under Part B will shed light on some of those considerations, SMCEA members thought it appropriate to give departments and agencies a range of means to describe and address those considerations.

Note 2: Information obtained under Item 4 will support analysis of policy options for the upcoming parliamentary review of the Act anticipated to commence by the year 2010.



**PART B**  
**Template for Case-Specific Information**

<b>Efforts made to obtain and consider Information and Views of the Public during the Conduct of Screenings<sup>1</sup></b> <b>(Name of Department or Agency)</b>				
<b>CEARIS #</b>	<b>Project Title</b>	<b>Mechanism for obtaining and considering Information and Views of the Public</b>	<b>Rationale for using the indicated Mechanism</b>	<b>Rationale for not posting a Public Participation Notice<sup>2</sup></b>
06-01-XXXXX	Tripling the capacity of the sewage treatment plant of Fat City	Extraction of relevant information from provincial EA	Province had previously completed a thorough EA which included an extensive public participation program.	xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxx
		Examination of records of municipal task force on wastewater infrastructure	The key issues had been identified through a two-year municipal planning process that had involved extensive public consultation.	xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxx
06-01-XXXYX	Ten-unit offshore wind power project near Paradise Point	Proponent's public participation program, which included open houses, workshops and opportunities for members of the public to provide comments on the draft screening report.	The proponent's public participation program was comprehensive in all respects and went well beyond what would normally be considered adequate for a project of this nature.	xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxx
06-01-XXXYX	Firing Range adjacent to Lonely Lane	Discussion of details of project with one local landowner.	Responsible authority obtained information regarding the specific concerns of the landowner and verified in the field that his property was the only one within 2 km of the firing point.	xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxx
<b>Note 1:</b> This table pertains to only a small subset of a random sample of 999 screenings commenced in the second half of 2006 whose conduct was ensured by SMCEA member departments and agencies, and that met the following conditions: completed before 31 May 2007; involved obtaining and considering information and views of the public; did not involve posting a Public Participation Notice on the Canadian Environmental Assessment Registry (CEARIS) .  <b>Note 2:</b> Examples of rationales for not posting a Public Participation Notice have not been provided so as not to bias the information provided by participating departments and agencies. Participants in the study may wish to refer to the <i>Ministerial Guidelines on Public Participation in Screenings</i> ; to Agency guidance; to their own internal policies and procedures; or to circumstances specific to the screening.				



## Appendix 2

### DEPARTMENTAL INPUTS TO STUDY

Department or Agency	Participated in		# of Screenings in	
	Part A of Study	Part B of Study	In Random Sample	In Actual Sample
Agriculture and Agri-Food Canada	yes	yes	168	168
Atlantic Canada Opportunities Agency	yes	yes	75	75
Canadian Food Inspection Agency	yes	yes	1	1
Canadian Heritage	yes	yes	4	4
Canadian Nuclear Safety Commission	no	yes	1	1
Canadian Transport Agency	no	no	2	0
Canadian Economic Development for Quebec Regions	no	no	24	0
Environment Canada	no	no	35	0
Fisheries and Oceans Canada	yes	yes	123	123
Health Canada	no	no	3	0
Human Resources and Social Development Canada	no	no	25	0
Indian and Northern Affairs Canada	yes	yes	252	252
Industry Canada	yes	yes	8	8
National Defence	yes	yes	62	62
National Energy Board	yes	yes	7	7
Natural Sciences and Engineering Research Council of Canada	yes	no	0	0
Natural Resources Canada	yes	yes	7	7
Parks Canada Agency	yes	yes	116	116
Public Works and Government Services Canada	yes	yes	7	7
Royal Canadian Mounted Police	no	no	2	0
Transport Canada	yes	yes	67	67
Treasury Board Secretariat	no	no	1	0
Western Economic Diversification Canada	no	no	9	0
			<b>999</b>	<b>898<sup>2</sup></b>

<sup>1</sup> There was great variability in the level of detail of information provided.

<sup>2</sup> A further 36 screenings were eliminated from the analysis because, upon closer examination, it was determined they did not meet all of the criteria for inclusion in the random sample. Therefore, the final sample size was 862.



## Appendix 3

### DETAILED RESULTS

#### **PART A OF THE WORK PROGRAM**

##### **A-1. Policies, Procedures and Practices of Responsible Authorities**

Table A-1 summarizes the responses received from departments and agencies addressing policies, procedures and practices they follow that are relevant to obtaining and considering information and views of the public during the conduct of screenings.

<b>Table A-1. Policies, Procedures and Practices of Responsible Authorities that are relevant to obtaining and considering Information and Views of the Public</b>	
<b>Agriculture and Agri-Food Canada (AAFC)</b>	<ul style="list-style-type: none"> <li>In some cases, provincial governments may decide to facilitate public participation by such means as public notices in newspapers, open houses and committees. AAFC uses such information to determine if additional public participation would improve the environmental assessment. If a positive determination is made, AAFC implements the process described in section 18(3) of the Act, and a <i>Notice of Public Participation</i> is posted on the CEARIS. AAFC has worked with individual farmers for many years to improve on-farm practices, and its staff of soil experts, engineers and environmental specialists typically have a good understanding of potential public concerns in the community and surrounding areas.</li> </ul>
<b>Atlantic Canada Opportunities Agency</b>	<ul style="list-style-type: none"> <li>The department contracts all of its assessment work to Public Works and Government Services Canada; it indicated that the policies and procedures of the latter organization would therefore apply.</li> </ul>
<b>Canadian Food Inspection Agency</b>	<ul style="list-style-type: none"> <li>The Canadian Food Inspection Agency has developed a general environmental assessment guide, based on CEA Agency guidance material. It addresses the question of when public participation is appropriate, but does not indicate how to consider or interpret public input.</li> </ul>
<b>Canadian Heritage</b>	<ul style="list-style-type: none"> <li>Canadian Heritage has procedures to be applied by program managers and project officers. Proponents (or their consultants) are required to prepare their own screening reports. Public Works and Government Services Canada provides oversight on behalf of Canadian Heritage.</li> </ul>
<b>Fisheries and Oceans Canada (DFO)</b>	<ul style="list-style-type: none"> <li>Fisheries and Oceans Canada applies the requirements of subsection 18(3) of the Act to development proposals involving tailings impoundment areas subject to the <i>Metal Mining Effluent Regulations</i>.</li> <li>Public consultation is addressed in <i>CEAA Guide: Applying the Canadian Environmental Assessment Act for the Fish Habitat Management Program</i> (April 2001). Although this document was written before the Act was amended in 2003, it contains a section on public involvement procedures and techniques, and is still used as a reference.</li> <li>Fisheries and Oceans Canada participated in the work of a subcommittee of the Minister's Regulatory Advisory Committee in developing the document entitled <i>Public Participation Guide</i>, which was published on the CEA Agency's Web site in May of 2008.</li> </ul>
<b>Indian and Northern Affairs Canada</b>	<ul style="list-style-type: none"> <li>The Indian Affairs Branch indicated that, as a matter of policy, public participation activities related to on-reserve projects are carried out by the First Nations themselves. In this context, the branch does not</li> </ul>



Table A-1. Policies, Procedures and Practices of Responsible Authorities that are relevant to obtaining and considering Information and Views of the Public	
	<p>normally conduct its own public participation programs under subsection 18(3) of the Act.</p> <ul style="list-style-type: none"> <li>• The department has developed an <i>Environmental Assessment Procedural Guide</i> which provides broad direction on the matter of public participation in screenings. It indicates that this consideration is to be addressed by each region on a case-by-case basis.</li> <li>• The Northern Affairs Branch, responsible for lands north of the 60th parallel, indicated that it has ensured appropriate levels of public participation in environmental assessments through the public participation mechanisms administered by the Nunavut Impact Review Board established under the <i>Nunavut Land Claims Agreement</i> and the Environmental Impact Screening Committee established under the <i>Inuvialuit Final Agreement</i>. Consequently the branch sees no need for conducting separate public participation activities under subsection 18(3) of the Act.</li> <li>• All of the screenings which the Northern Affairs Branch addressed in the current study pertained to the projects in Nunavut. As a result of recent amendments to the <i>Nunavut Land Claims Agreement</i>, the Act no longer applies in the Nunavut Settlement Area.</li> </ul>
Industry Canada	<ul style="list-style-type: none"> <li>• Public consultation is addressed in general terms in two documents, <i>Industry Canada's Environmental Assessment Policy</i> and <i>Industry Canada's Guide on Environmental Assessments</i>. Neither of those documents specifically address the interpretation of subsection 18(3) of the Act.</li> </ul>
National Defence	<ul style="list-style-type: none"> <li>• Public consultation is addressed in broad terms in an <i>EA Manual</i> and in more specific terms in a <i>Consultation Guide</i>. Neither document specifically addresses the interpretation of subsection 18(3) of the Act.</li> <li>• Subsection 257(2) of the <i>National Defence Act</i> requires notification of the public when military manoeuvres take place outside of a Canadian Forces Establishment.</li> </ul>
National Energy Board (NEB)	<ul style="list-style-type: none"> <li>• The NEB requires all facility applicants to engage stakeholders potentially affected by their project.</li> <li>• Most small facility applications generate minimal contact with the public. Unless there is an indication of significant public interest, public comment periods on scope and upon the screening document are not normally provided.</li> <li>• Screenings of larger facilities use the public hearing process established under section 52 of the <i>National Energy Board Act</i>.</li> </ul>
Natural Resources Canada	<ul style="list-style-type: none"> <li>• Staff refers to the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• The department takes into consideration consultation conducted by the proponent or by other jurisdictions, as well as comments or petitions from the public before determining whether additional public consultation under subsection 18(3) of the Act would further inform its decision.</li> </ul>
Natural Sciences and Engineering Research Council of Canada	<ul style="list-style-type: none"> <li>• The Council funds scientific research nationally and internationally. The Council consults and coordinates with officials of provinces, territories and countries where the research is conducted.</li> </ul>



Table A-1. Policies, Procedures and Practices of Responsible Authorities that are relevant to obtaining and considering information and views of the public	
	<ul style="list-style-type: none"> <li>• Researchers applying for funding are required to identify and address environmental concerns, whether or not this is required by the Act. The types of projects screened rarely elicit the interest or concern of members of the public.</li> </ul>
<b>Parks Canada Agency</b>	<ul style="list-style-type: none"> <li>• Two national guidance documents, <i>Parks Canada Guide to Compliance with the Canadian Environmental Assessment Act</i> and <i>Parks Canada's Screening Report Form</i>, incorporate the criteria provided in the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• The <i>Parks Canada Guide</i> specifically addresses the interpretation of subsection 18(3) of the Act. Moreover, the <i>Screening Report Form</i> requires each environmental assessment practitioner conducting a screening to make an explicit decision on whether public participation is warranted. In both cases, the decision criteria are based on the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• Western parks also have notification, advertisement and consultation procedures that are applied locally outside the context of subsection 18(3) of the Act.</li> </ul>
<b>Public Works and Government Services Canada (PWGSC)</b>	<ul style="list-style-type: none"> <li>• PWGSC currently uses its own <i>Public Participation Determination Checklist</i> to determine whether public consultation is required during the conduct of a screening. The template addresses the seven criteria in the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> </ul>
<b>Transport Canada</b>	<ul style="list-style-type: none"> <li>• The <i>Transport Canada Environmental Assessment Guide</i> has a chapter entitled <i>Involving the Public</i>. It lists department-specific criteria for determining when public involvement in the assessment is appropriate. It also provides department-specific criteria for identifying who should be involved.</li> <li>• If public consultation has been undertaken by the proponent or has occurred within another process (e.g. federal or provincial environmental assessment, municipal planning or approval process), Transport Canada requests that the screening report includes a summary that describes the process, identifies the concerns raised, and indicates how those concerns were addressed.</li> </ul>



## **A-2. Problems encountered by Federal Departments and Agencies in Interpreting and Implementing Subsection 18(3) of the Act**

Table A-2 summarizes the problems that federal departments and agencies reported they had encountered in interpreting and implementing subsection 18(3) of the Act.

<b>Table A-2. Reported Problems in Interpreting and Implementing Subsection 18(3) of the Act</b>	
<b>- A- Issues related to Process Duplication or to the Narrow Scope of Federal Assessments</b>	
<ul style="list-style-type: none"> <li>• It is confusing for the public when federal consultations are undertaken on projects that have already gone through a municipal planning process.</li> <li>• There is potential for duplication of the public consultation processes of provincial environmental assessment jurisdictions (e.g., Bureau d'audiences publiques sur l'environnement).</li> <li>• The public is frustrated by the narrow scope of federal consultations.</li> <li>• It is unclear how to deal with issues outside the scope of the screening, outside the mandate of the responsible authority, or outside the jurisdiction of the federal government.</li> <li>• Invoking subsection 18(3) of the Act may create unrealistic expectations in those cases where the project is narrowly scoped; it is difficult to communicate to the public the underlying rationale of such scoping decisions.</li> </ul>	
<b>- B- Issues related to Timeliness, Efficiency and Flexibility</b>	
<ul style="list-style-type: none"> <li>• Invoking subsection 18(3) of the Act requires that the public be given the opportunity to review and comment upon the screening report. This automatically adds at least another 30 days to the timetable for screening smaller projects.</li> </ul>	
<b>- C- Issues related to Consistency</b>	
<ul style="list-style-type: none"> <li>• There is no commonly accepted or legislated definition of public participation, nor is there universal appreciation of the available range of valid approaches to public participation.</li> <li>• Leaving the decision on the need for public participation solely to the discretion of responsible authorities leads to inconsistent decision-making.</li> <li>• Criteria for invoking subsection 18(3) of the Act are unclear; there are practical difficulties in interpreting the term "appropriate in the circumstances". Guidance provided by the CEA Agency or by the headquarters of many responsible authorities is not sufficiently specific from a technical standpoint.</li> <li>• The linkages between one of the stated purposes of the Act "to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment" and subsection 18(3) of the Act are not explicit.</li> <li>• There is a lack of guidance on the use of the results of public participation programs conducted by others (e.g. proponent, province).</li> </ul>	

## **A-3. Solutions to Reported Problems proposed by Departments and Agencies**

Table A-3.1 summarizes the non-legislative and legislative solutions federal departments and agencies proposed to address problems they had identified in relation to interpreting and implementing subsection 18(3) of the Act.



<b>Table A-1. Policies, Procedures and Practices of Responsible Authorities that are relevant to obtaining and considering Information and Views of the Public</b>	
	<ul style="list-style-type: none"> <li>• Researchers applying for funding are required to identify and address environmental concerns, whether or not this is required by the Act. The types of projects screened rarely elicit the interest or concern of members of the public.</li> </ul>
<b>Parks Canada Agency</b>	<ul style="list-style-type: none"> <li>• Two national guidance documents, <i>Parks Canada Guide to Compliance with the Canadian Environmental Assessment Act</i> and <i>Parks Canada's Screening Report Form</i>, incorporate the criteria provided in the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• The <i>Parks Canada Guide</i> specifically addresses the interpretation of subsection 18(3) of the Act. Moreover, the <i>Screening Report Form</i> requires each environmental assessment practitioner conducting a screening to make an explicit decision on whether public participation is warranted. In both cases, the decision criteria are based on the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• Western parks also have notification, advertisement and consultation procedures that are applied locally outside the context of subsection 18(3) of the Act.</li> </ul>
<b>Public Works and Government Services Canada (PWGSC)</b>	<ul style="list-style-type: none"> <li>• PWGSC currently uses its own <i>Public Participation Determination Checklist</i> to determine whether public consultation is required during the conduct of a screening. The template addresses the seven criteria in the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> </ul>
<b>Transport Canada</b>	<ul style="list-style-type: none"> <li>• The <i>Transport Canada Environmental Assessment Guide</i> has a chapter entitled <i>Involving the Public</i>. It lists department-specific criteria for determining when public involvement in the assessment is appropriate. It also provides department-specific criteria for identifying who should be involved.</li> <li>• If public consultation has been undertaken by the proponent or has occurred within another process (e.g. federal or provincial environmental assessment, municipal planning or approval process), Transport Canada requests that the screening report includes a summary that describes the process, identifies the concerns raised, and indicates how those concerns were addressed.</li> </ul>



## **A-2. Problems encountered by Federal Departments and Agencies in Interpreting and Implementing Subsection 18(3) of the Act**

Table A-2 summarizes the problems that federal departments and agencies reported they had encountered in interpreting and implementing subsection 18(3) of the Act.

<b>Table A-2. Reported Problems in interpreting and implementing Subsection 18(3) of the Act</b>	
<b>- A- Issues related to Process Duplication or to the Narrow Scope of Federal Assessments</b>	
<ul style="list-style-type: none"> <li>• It is confusing for the public when federal consultations are undertaken on projects that have already gone through a municipal planning process.</li> <li>• There is potential for duplication of the public consultation processes of provincial environmental assessment jurisdictions (e.g., Bureau d'audiences publiques sur l'environnement).</li> <li>• The public is frustrated by the narrow scope of federal consultations.</li> <li>• It is unclear how to deal with issues outside the scope of the screening, outside the mandate of the responsible authority, or outside the jurisdiction of the federal government.</li> <li>• Invoking subsection 18(3) of the Act may create unrealistic expectations in those cases where the project is narrowly scoped; it is difficult to communicate to the public the underlying rationale of such scoping decisions.</li> </ul>	
<b>- B- Issues related to Timeliness, Efficiency and Flexibility</b>	
<ul style="list-style-type: none"> <li>• Invoking subsection 18(3) of the Act requires that the public be given the opportunity to review and comment upon the screening report. This automatically adds at least another 30 days to the timetable for screening smaller projects.</li> </ul>	
<b>- C- Issues related to Consistency</b>	
<ul style="list-style-type: none"> <li>• There is no commonly accepted or legislated definition of public participation, nor is there universal appreciation of the available range of valid approaches to public participation.</li> <li>• Leaving the decision on the need for public participation solely to the discretion of responsible authorities leads to inconsistent decision-making.</li> <li>• Criteria for invoking subsection 18(3) of the Act are unclear; there are practical difficulties in interpreting the term "appropriate in the circumstances". Guidance provided by the CEA Agency or by the headquarters of many responsible authorities is not sufficiently specific from a technical standpoint.</li> <li>• The linkages between one of the stated purposes of the Act "to promote communication and cooperation between responsible authorities and Aboriginal peoples with respect to environmental assessment" and subsection 18(3) of the Act are not explicit.</li> <li>• There is a lack of guidance on the use of the results of public participation programs conducted by others (e.g. proponent, province).</li> </ul>	

## **A-3. Solutions to Reported Problems proposed by Departments and Agencies**

Table A-3.1 summarizes the non-legislative and legislative solutions federal departments and agencies proposed to address problems they had identified in relation to interpreting and implementing subsection 18(3) of the Act.



**Table A-3. Solutions to Reported Problems proposed by Federal Departments and Agencies**

<b>A - Issues related to Process Duplication or to the Narrow Scope of Federal Assessments</b>	
<p><b>Non-Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Indicate on the Canadian Environmental Assessment Registry Internet Site (CEARIS) that the applicant has engaged in early public consultation activities.</li> <li>• Include checkboxes on the CEARIS input interface to indicate the existence and details of public participation activities occurring outside of the context of subsection 18(3).</li> <li>• Recognize in policy instruments that responsible authorities may use the results of previously completed environmental assessment consultations.</li> </ul>	<p><b>Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Recognize in legislation that responsible authorities may use the results of previously completed environmental assessment consultations.</li> </ul>
<b>B - Issues related to Timeliness, Efficiency and Flexibility</b>	
<p><b>Non-Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Devise means of making screening reports more readily accessible to the public, while meeting the requirements of the <i>Official Languages Act</i> and related Treasury Board Policies.</li> </ul>	<p><b>Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Remove paragraph 18(3)(b) "shall give the public an opportunity to examine and comment on the screening report and on any record relating to the project that has been included in the Registry before taking a course of action under section 20 and shall give adequate notice of that opportunity".</li> <li>• Build more flexibility into subsection 18(3) so that it would be possible to discontinue public participation activities in cases where the public clearly has no interest in the project.</li> </ul>
<b>C - Issues related to Consistency</b>	
<p><b>Non-Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Promote universal use of the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>.</li> <li>• Provide specific guidance on making the decision on whether to invoke subsection 18(3) of the Act.</li> <li>• Provide specific guidance on the interpretation of subsection 18(3) of the Act in situations where there is a Crown duty to consult with Aboriginal peoples.</li> <li>• Develop policies, guidelines and guides related to the process of public consultation.</li> <li>• Provide specific training on interpreting and implementing subsection 18(3) of the Act.</li> </ul>	<p><b>Legislative Solutions</b></p> <ul style="list-style-type: none"> <li>• Define public participation in the Act.</li> <li>• Clarify subsection 18(3) of the Act by acknowledging that public participation comprises a range of valid options.</li> <li>• Establish a fixed public comment period for all screenings.</li> </ul>



## **PART B OF THE WORK PROGRAM**

A summary of the findings of the Part B of the program is provided in Section 3.2 of the main report. More detailed information on the various reported mechanisms for obtaining public input is provided below.

### **B-1. Direct Public Input to a Federal Screening managed by the Responsible Authority**

Responsible authorities indicated that they had sought direct input from selected members of the public in 19 out of the 862 screenings addressed in the study (2.2% of cases). In those cases they had sought such input from directly affected parties or from parties known to have an interest in comparable projects. Because they did not perceive the environmental issues to be of interest to the public at large, they did not consider those targeted solicitations of input to constitute public participation under subsection 18(3) of the Act.

Fisheries and Oceans Canada was the responsible authority in eight cases; Parks Canada Agency in eight cases and Transport Canada in three cases.

In the majority of cases some details of the public participation activities were provided, but precise outcomes were not described. In one case it was indicated that feedback to a proposal had been positive; in another that issues raised by First Nations had been addressed, and in a third that that First Nations had been consulted and had expressed no concerns.

Six of the eight solicitations of public input by Parks Canada Agency were the result of a "blanket direction" of the Warden of Banff National Park to make screening reports available for comment for a period of 10 working days.

### **B-2. Direct Public Input to a Federal Screening managed by the Proponent**

Responsible authorities indicated that the proponent had sought direct public input to the screening in 10 out of the 862 screenings addressed in the study (1.2% of cases).

In the majority of cases some details of the public participation activities of proponents were provided, but precise outcomes were not typically described. However, in one case the information provided indicated that a navigational concern had been identified and addressed by the proponent during the public participation process. In another case there was an indication that public concerns had been addressed at an early design stage, and in still another, that the project incorporated the ideas and comments of the public. In three other cases it was stated that feedback was positive; that no issues were identified; or that there was no significant opposition to the proposal.



### **B-3. Potential Indirect Public Input via a Related Environmental Assessment Process**

In 25 instances (2.9% of cases), responsible authorities reported that their screenings had reflected public input to a related environmental assessment process administered by a federal or provincial government or by a body established under a land claim agreement. Four of the ten cases that related to a provincial environmental assessment process involved projects that had not proceeded beyond the "project registration stage" used by some provinces to test public reaction to the development proposal, and to determine whether and how the project should be assessed.

Of the 25 assessments actually undertaken, 10 had followed the environmental assessment process established under the *Nunavut Land Claims Agreement* and one had followed the process established under the *James Bay and Northern Quebec Agreement*. As a result of the recent amendments to the *Nunavut Land Claims Agreement*, the Act would not now apply to projects of this nature in the Nunavut Settlement Area.

As the precise linkages between the various environmental assessment processes and the screenings were not always clear, all of those situations have been classified as "potential" instances of indirect public input.

### **B-4. Potential Indirect Public Input via a Related Regulatory or Planning Process**

In 57 instances (6.6% of cases), responsible authorities reported that their screenings had been informed by public input (or lack thereof) to the following regulatory or planning processes that applied to the project:

- federal or provincial regulatory processes
  - *National Energy Board Act*
  - *Canadian Oil and Gas Operations Act*
  - *Navigable Waters Protection Act*
  - *Canadian Environmental Protection Act*
  - *Ontario Drainage Act*
- processes of local authorities
- planning processes of National Parks or National Historic Sites
- other federal planning processes

#### **a) Federal or Provincial Regulatory Processes**

The National Energy Board administers both the *National Energy Board Act* and the *Canadian Oil and Gas Operations Act*. Six screenings in the random sample were triggered by the former Act and one by the latter.

The National Energy Board's *Filing Manual* describes requirements expected of proponents in filing an application under the *National Energy Board Act*, including those



related to public consultation. These requirements could potentially apply to projects of any scale regulated by the National Energy Board, but the characteristics of the six projects in the sample would suggest that little or no public consultation would have been required in those cases. In contrast, there is a high likelihood that the proponent undertook some form of public consultation on the project approved under the *Canadian Oil and Gas Operations Act*, which involved a three-year drilling program in an established *Migratory Bird Sanctuary* in the Inuvialuit Settlement Area

Transport Canada administers the *Navigable Waters Protection Act* and Environment Canada administers the *Canadian Environmental Protection Act*. Both acts are triggers for the *Canadian Environmental Assessment Act*. It would be expected that a screening would normally be conducted prior to proceeding with public advertisements required before a permit, license or approval can be issued under the triggered acts. Nevertheless, responsible authorities identified those required public notifications as the primary mechanisms for obtaining public input 14 times in the case of the *Navigable Waters Protection Act* and once in the case of the *Canadian Environmental Protection Act*. Those acts require, at minimum, advertisement or notification of the intended action. However, those requirements do not guarantee the receipt of public input. In fact Transport Canada reported that in nine of the 14 cases where public notification requirements of the *Navigable Waters Protection Act* had been met, no public input had been received. For all of the above reasons, relying upon the notification mechanisms of the above acts appears to be at best a tenuous mechanism for soliciting public input to a screening.

The Ontario *Drainage Act* requires not only advertisement and notification, but also direct engagement of landowners and local authorities whose economic interests would be affected by a specific land drainage proposal. For that reason it is considered a more robust potential mechanism for obtaining public input than some of the preceding ones. However, there is still no guarantee that input so received will be considered in a screening.

#### b) Processes of Local Authorities

In 17 screenings of small-scale local projects (improvements to water systems, storm sewers and local roads; construction of a footbridge; building restoration; improvements to navigational aids) responsible authorities indicated that public input previously provided to local authorities had informed the screenings. It should be noted that the above screenings are in addition to the ones previously discussed where local authorities played key roles in class assessments under the Ontario *Environmental Assessment Act* or in approval processes under the Ontario *Drainage Act*.

#### c) Planning Processes of National Parks or National Historic Sites

In eight screenings of projects in National Parks or National Historic Sites, the Parks Canada Agency reported that appropriate levels of public input had already been obtained through prior relevant processes for developing Park Management Plans, Historic Site Management Plans, Interim Management Guidelines, or Road Salt Management Plans.



d) Other Federal Planning Processes

In three screenings of projects on federal land, responsible authorities reported that they had used public input to a planning process for federal land (Pickering Green Space Master Plan; Petawawa Research Forest Multi-year Forest Management Plan).

**B-5. Potential Indirect Public Input via Another Mechanism**

In 266 instances, or 30.9% of all cases addressed in the study, respondents reported the existence of one of the following potential mechanisms for obtaining and considering information and views of the public:

- Mechanisms used by First Nations
- Mechanisms used by Small Craft Harbour Authorities
- Mechanisms (not previously described) used by provincial governments

In all cases the information provided was insufficient for identifying the specific screenings where the potential mechanisms had actually been employed.

a) Mechanisms used by First Nations

Screenings of projects on First Nations reserves accounted for 243 of the 862 screenings addressed in the study (28.2%).

More than half of those screenings pertained to the routine provision of housing and related services on reserves; as a result of amendments to the *Exclusion List Regulations*, which came into effect on May 31, 2007, screenings of such projects are no longer required. Most of the remaining screenings pertained to routine permitting, leasing and right-of-way transactions related to agriculture, forestry, oil and gas exploration and production, and pipeline transportation undertakings.

A small proportion of the screenings pertained to projects of general benefit to First Nations communities (e.g. schools, recreational facilities, environmental clean-up) and occasionally to commercial enterprises.

b) Mechanisms used by Small Craft Harbour Authorities

Screenings of projects related to small craft harbours accounted for 21 of the 862 screenings addressed in the study (2.4%). Those projects were undertaken by Fisheries and Oceans Canada under its Small Craft Harbours Program, and were mainly routine and non-controversial in nature (e.g. harbour dredging, wharf repairs).

Fisheries and Oceans Canada indicated that it relies on Small Craft Harbour Authorities, whose members are volunteers from the community, to bring forward any community input that should be reflected in the screenings of the above projects.



c) Mechanisms used by Provincial Governments

Two screenings in the sample pertained to projects where public would have been informed or involved through a provincial mechanism that has not been previously described. One pertained to the replacement of a facility (a boat launching ramp) located in a provincial park. It was being undertaken in response to public demand. The other project involved replacing a deteriorating highway bridge over a creek with a culvert structure to address publicly expressed concerns about safety.



